

The Builder.

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THE point which most impressed us during a perusal of the new Bill to amend the Buildings Act, brought in by Lord Carlisle,—or, as it is to be called, when passed, "The Metropolitan Buildings Act, 1849,"—is the great alteration made in the relative positions of the Official Referees and the Registrar.

To all who have been much in communication with these authorities it must have become painfully evident that there was great want of unanimity between the referees and the registrar—that an antagonistic feeling prevailed which could not fail to militate against the speedy and satisfactory discharge of the business of the office. A return of the number of awards made by the referees, since the date of the Supplemental Act that changed the referees from two to three, to which the registrar has refused to affix the seal, and which have consequently been sent to the Commissioners of Woods for adjudication, would show this in a singularly striking manner. Before the passing of the Supplemental Act, when there were but two referees, the registrar acted as a third referee, and the two opinions, where there was a difference, carried it against the one. The seal, so far as we can learn, was then seldom if ever withheld. Since that event, however, the position of the registrar, acting no longer as referee, has necessarily changed, and he has found it his duty to be much more particular in respect of forms, and is less often able to give effect to the award of the referees by affixing the seal. How far the registrar may have been right or wrong we have not now to inquire; we are simply stating the actual position of affairs at the office.

Under the existing Act the referees are appointed as the parties to superintend its execution, and to arbitrate on differences, "as well as to exercise, in certain cases, a discretion in the relaxation of the fixed rules and directions of the Act." The registrar is appointed that relaxations and proceedings may be duly recorded, and with power to withhold the seal from any award, or other document, until directed by the Commissioners of Woods, "if it shall appear to the said registrar that any such documents are contrary to law, or not complete in any of the requisite forms, or beyond the competence of the said official referees."

By the provisions of the new Bill, it will be seen that the registrar is made supreme and dominant, and the referees removed to the position of his clerks or assistants, with the duty of supervising all public buildings. Clause 70 says,—"for the purpose of providing for the determination of questions, and the adjudication of matters arising under this Act, be it enacted—

"That if any doubt, difference, or dissatisfaction arise between any persons whatsoever as to whether any matter or thing is subject to any of the provisions, rules, and directions of this Act, or as to which of such provisions, rules, and directions any matter or thing is subject to, or as to the true intent and meaning or effect of this Act in any case, or whether any matter or thing is or has been done con-

trary to any of the provisions, rules, and directions of this Act, or as to any matter whatever, whether involving questions of law or questions of fact, arising under or within the operation of this Act, or if any building owner or other person claim to execute any work or operation authorised or required by this Act, and the adjoining owner or other person whose consent thereto may be required shall not have signified in writing his consent to such work or operation, if any such adjoining owner or other person cannot be found, or cannot by reason of legal disability or other cause give such consent, or if it be not known who is the person having a right to give such consent, or if any person claim any special certificate which is required or authorised by any of the provisions, rules, or directions of this Act, then it shall be lawful for both or either of the parties concerned in any such case of doubt, difference, or dissatisfaction as aforesaid, or for any such building owner or other person, or for any person claiming any such special certificate as aforesaid, to refer any such matter of doubt, difference, or dissatisfaction, or any such claim, to the registrar of metropolitan buildings, by requisition in writing.

True, it goes on to say,—

"And if any such requisition relate to the structural sufficiency or stability of any building or part thereof, or of any work done or proposed to be done, or to the quality of materials, or work or workmanship, or to the nature of any business alleged to be dangerous, noxious, or offensive, or to the general line of buildings, or to the obstruction of light and air, or other injury alleged to be occasioned by any projection, or to the works necessary to be done to any party-structure, or the proper manner of executing works by this Act authorised to be done, or to the quantity of soil or ground or other parts of the premises of one owner which ought to be laid to the premises of another owner, or to the amount of the expenses of works, or to the amount of damage, loss, or injury done in any case, or to the alteration in the value of any premises in consequence of any works, or to any other matter whatever requiring the exercise of the professional knowledge, skill, or judgment of an architect or surveyor, then in any such case, where the question does not relate to any public building, it shall be the duty of the registrar to refer, either generally or specially, any such matters so requiring the exercise of the professional knowledge, skill, or judgment of an architect or surveyor as aforesaid, to one of the official referees, or if the matter of such question be a claim on the part of a building owner or other person to execute any work or operation authorised or required by this Act as aforesaid, and the district surveyor be not a party concerned, then to the district surveyor, to ascertain the facts and circumstances of the case in respect of such matter, and to certify upon such matter; and where the question relates to any public building it shall be the duty of the registrar to refer as aforesaid any such matter to the official referees, or two of them, to ascertain the facts and circumstances of the case, and to certify upon such matter."

But what then? The referee or the district surveyor having examined into the matter and reported his opinion to the registrar, the registrar, after seven days' notice to the parties of such report (if from the district surveyor), "shall dispose of the matters in reference, together with such matters incidental thereto or involved therein, either by one award or by several awards, as he may think proper, and in such award or awards shall make such determination, appointment, order, or direction, or give such consent or authority, as the case shall require."

More than that,—

"If it appear to the registrar that the matter of any requisition is such as not to require the exercise of the professional knowledge, skill, or judgment of an architect or surveyor as aforesaid, then it shall be lawful for him to dispose of the matters in reference to him, together with such matters incidental thereto or involved therein, either by one award or by several awards, as he shall think proper,

and in such award or awards to make such determination, appointment, order, or direction, or give such consent or authority, as the case shall require, without the certificate of any district surveyor, official referee or referees as aforesaid."

So that, as we have said, the registrar for the time being will be supreme; he may call in anybody or nobody to advise him; take the advice or not, just as he pleases; and the referees are reduced to the position of his clerks or assistants.

The committee appointed by Lord Carlisle in 1847, to inquire into the desirability of amending the Act, were unanimous on two points,—the necessity of lessening law-forms and technical proceedings, and of giving the officers under the Act greater discretionary powers,—that is, empowering them to do what, according to the 80th section of the present Act, already quoted, they were appointed to do, but for which it seems no power was given them,—viz., "to exercise, in certain cases," a discretion in the relaxation of the fixed rules and directions of this Act, where the strict observance thereof is impracticable, or would defeat the object of this Act, or would needlessly affect with injury the course and operation of this branch of business."

Now the first of these recommendations would be carried out by the transformation of the board to which we have drawn attention, it is unnecessary to say: forms and technical proceedings would be multiplied without end: it would be a law-court, and all the advantages which were looked for on the establishment of the office, in the shape of prompt decisions and the legislation of practical men, would disappear.

As to the discretionary powers, clause 10 of the new Bill says,—

"That if any of the rules or directions of this Act be found to defeat the purposes of this Act, or needlessly to affect with injury the course or operation of any trade or business, or to obstruct the advantageous use or conversion of buildings, or to hinder the adoption of improvements or of expedients either better or sufficiently well adapted for accomplishing the purposes of this Act; or if in rebuilding any building already built, or in executing any work upon any such building, a full compliance with the rules and directions of this Act will be attended with injury, loss, or inconvenience; or if in any case any rules or directions of this Act be at variance with or prevent the due observance of the covenants, agreements, or conditions contained in any lease, or agreement for a lease, being of the nature of a building lease, made before the passing of this Act,"—

Then the person affected may ask a modification from the registrar, and the registrar is to obtain the opinion of the referees on the statement, and report it, with his own opinion, to the Commissioners of Woods, who may make the modification required; but this, it will be seen, goes little farther than clause 11 of the present Act.

The Bill proposes a novelty, in the shape of an attorney to be appointed to serve as agent on behalf of the district surveyors and of the official referees when acting in the supervision of public buildings. It is to be "the duty of the said agent to act on behalf of the district surveyors and on behalf of the official referees acting as aforesaid, in the conduct and management of all prosecutions and other proceedings before any justices, magistrates, or courts of law or equity, which any district surveyor or official referee is by this Act directed or authorised to conduct or take, and also to act on the part of the said surveyors or of the said

* These words, "certain cases," made the hitch which prevented the exercise of discretionary powers.